

February 28, 2006

Mr. Walter D. Cruickshank
Acting Director
Minerals Management Service
Department of the Interior
381 Elden Street, MS—4024
Herndon, Virginia 20710-4817

Dear Mr. Cruickshank:

Re: Advanced Notice of Proposed Rulemaking: Alternate Energy-Related Uses on the
Outer Continental Shelf
Regulation Identifier Number: 1010-AD30

On behalf of the NJ Department of Environmental Protection, I am submitting comments on the Advanced Notice of Proposed Rulemaking (ANPR). Section 388(a) of the Energy Policy Act of 2005 provides for alternate energy-related uses on the Outer Continental Shelf (OCS) and requires the Department of Interior to grant leases, easements or rights-of-way on the OCS for development of energy resources other than oil and gas. The Minerals Management Service (MMS) will be the federal agency in the Department of Interior exercising this authority. Among the objectives MMS expressed for the new program is providing access to the OCS for such projects in a way that balances competing and complementary uses of offshore acreage. In addition, the Energy Policy Act calls for alternate energy uses to be carried out in a manner that provides for protection of the environment and conservation of the natural resources of the OCS.

My primary concern regarding this rule is that it is essential for the MMS to ensure that coastal states have a significant role in the planning and siting of alternate uses and that the cumulative and secondary effects of alternate uses of the OCS be considered. Coordination, consultation and cooperation with coastal states are key to the successful implementation of this new program and imperative to balancing national interests with the well-being of the citizens of affected states. MMS must ensure that coastal states are not merely stakeholders in the process, but are partners in the development of the program and regulations, and in reviewing specific projects.

MMS should work with states to establish regional programs. This regional approach would enable the MMS program to take into account regional differences in the ocean resources, environment and uses. The coordination with coastal states will also be important in addressing the enforceable policies of state coastal management programs

approved under the Coastal Zone Management Act (CZMA). Coordination will also aid in identifying existing resource and use information, interested participants and baseline data gaps. These policies will apply to federal actions related to alternate uses of the OCS where those actions would have a reasonably foreseeable effect on uses or resources of a state's coastal zone. Coordination would promote compliance with the CZMA and acceptance from those most affected by implementation of the Energy Policy Act of 2005. It would also facilitate design of projects that comply with an affected state's enforceable policies. Direct involvement of coastal states in the rulemaking process should also streamline each state's review of the proposed rulemaking under the federal consistency provisions of the CZMA.

Data is lacking on the natural resources of the OCS, including the distribution of marine mammals and birds. Without gathering baseline data, an informed assessment of the impacts of alternate energy uses cannot be made. Therefore, studies are needed prior to developing specific regional plans. Wind, tide and wave resources are ubiquitous on the OCS, making the consideration of other natural resources and ocean uses, as well as cumulative and secondary impacts, critical. As Europe has been at the forefront of development of offshore alternate energy uses, MMS should look to the European experience in developing this program, particularly the resource evaluation conducted prior to full-scale project development.

In December 2004, then Governor Codey created a panel to identify and weigh the costs and benefits of developing offshore wind turbine facilities, and provide policy recommendations regarding the appropriateness of developing offshore wind turbine facilities. The panel is deliberating on next steps and recommendations, which are expected to be delivered to Governor Corzine next month. As the timing of the release of these recommendations coincides with MMS rule development, the Department would like to partner with MMS on implementing those next steps and recommendations of the panel accepted by the Governor.

With regard to the Department's stance on the importance of state input, I am also commenting on a separate notice contained in the Volume 71, No.1 Federal Register regarding MMS setting Federal OCS administrative boundaries beyond state submerged lands for Department of Interior planning, coordination and administrative purposes. These boundaries were set without public notice or coordination, consultation, or cooperation of coastal states, although they would clearly impact coastal states. The notice indicates that MMS believes that these boundaries will assist in determining "affected State" status under the CZMA. Although the methodology may be sound for the creation of boundaries subject to international law with regard to the uses or resources of the Exclusive Economic Zone, the procedure falls short with regard to determining affected states. These boundaries do not accurately reflect the areas where an effect on New Jersey's coastal zone uses and resources are reasonably foreseeable and are not appropriate for use in determining "affected" States status under the CZMA for the purposes of applying federal consistency.

I am not providing detailed comments on all program areas at this time. I would like to reiterate the importance New Jersey places on working with MMS in developing this program and implementing regulations. I look forward to direct consultation with MMS on program development.

Sincerely yours,

Lisa P. Jackson
Commissioner